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ABSTRACT

This analysis of the employment issues covered in California Assembly Bill (AB) 1725 includes general background information, relevant recommendations by the Commission for the Review of the Master Plan for Higher Education, the fundamental positions of the Board of Governors of the California Community Colleges, and a discussion of seven employment issues. Each issue is considered in terms of present law and practice, relevant provisions of AB 1725, and specific comments concerning the provisions. The seven issues are: (1) minimum qualifications for faculty and administrators, including provisions for the abolition of credentials and "grandfathering"; for the substance, establishment, and change of the qualifications; for waiving the qualifications; and for auditing and accountability; (2) hiring and affirmative action, including intent language on hiring criteria; (3) evaluation, including recognition of both peer review and collective bargaining; (4) tenure, including language on the length of the probationary period, required notice, and terminal year; the bachelor's degree requirement; and grievance and hearing rights; (5) layoff and reassignment; (6) staff development, including language creating development funds; and (7) collective bargaining. (EJV)

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Analysis

AB 1725 Employment Issues

Agenda Addendum
Board of Governors Meeting
California Community Colleges
October 29-30, 1987

TC 870 437

Chancellor's Office
California Community Colleges
Sacramento, California

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Contents

	Page
General Background	1
Master Plan Commission Recommendations	3
Prior Board Positions	5
Detailed Analysis of AB 1725 Provisions:	
1. Credentials and Minimum Qualifications	7
2. Hiring and Affirmative Action	21
3. Evaluation	31
4. Tenure	35
5. Layoff and Reassignment	47
6. Staff Development	51
7. Collective Bargaining	60

The AB 1725 text reproduced in this item was prepared by the California Community College Trustees by combining the September 1, 1987, printed version of the bill with all the requested amendments submitted by the Task Force but not yet in official print. This is appropriate because the Joint Committee's intent is to place all the Task Force amendments into print; however, some changes of language may appear when the next official printed version of the bill appears, due to changes which may be made by Legislative Counsel.

General Background

Most of the provisions in AB 1725 concerning employment are traceable to a single source: the Task Force on Faculty and Administrator Qualifications, Hiring, Evaluation, and Retention ("the Task Force" or "the AB 3409 Task Force." The Task Force, which was created by AB 3409 (Hayden, 1986), first convened in December 1986. Its members, appointed by Chancellor Joshua Smith, were six faculty, four administrators, and one trustee. It was balanced as to ethnic and geographic representation and included representatives of the major statewide organizations with the greatest stakes in employment issues (see appendix for list of members).

The AB 3409 Task Force met on 22 dates between December 1986 and August 1987. On April 1 the group submitted its preliminary report to the Joint Committee on the Master Plan, and on August 15 the chairman, Cy Gulassa, submitted the final draft of further amendments recommended by the Task Force. (The members of the group have requested to continue as long as necessary as an informal advisory committee to the Joint Committee, even though their statutory existence according to AB 3409 expired on September 30.)

Interacting with the Task Force's work were two studies by the consultant firm of Berman, Weiler Associates: one was devoted exclusively to the problem of how to replace the current credentials system; the other explored the full range of employment questions outlined in AB 3409. These studies were undertaken for the Chancellor's Office, and the reports were directed to the Chancellor, but the AB 3409 Task Force's reports were made directly to the Joint Committee; moreover, the Chancellor's Office did not have a participating representative on the AB 3409 employment issues task force, as it did on the Finance Task Force.

A full discussion of the background and process behind the Task Force and Berman-Weiler reports, comparisons of the specific recommendations, and a discussion of the costs and workload implications were included in a May Board of Governors agenda item, *New Standards for Faculty and Administrator Employment.* However, between the publication of that item and the Task Force's final submittal in August, several recommendations were changed or expanded, and new recommendations were added. Some of the most significant changes were:

- The Task Force changed its recommendation on the probationary period to suggest a "1+1+2" scheme, two 1-year contracts followed by one 2-year contract.

- The recommendation on retreat rights for administrators was changed to require two years of service rather than three before an administrator without

prior faculty tenure in the district should get retreat rights, and to eliminate any union role in the faculty decision to concur in such retreat rights.

- A distinction was added between a union role in the "process" for granting a waiver to the statewide minimum qualifications in faculty hiring, and an academic senate role in establishing the"criteria" for such waivers.

- The Task Force added new language proposing the establishment of "faculty service areas" for use in reassignment and layoff, and requiring every district to adopt "competency standards" for the same purposes.

- Language was added defining appeal rights in case of a negative re-employment or tenure decision, defining the terms "faculty" and "instructional or student services administrator" for purposes of the new law, and protecting the collective bargaining status of faculty who participate in employment decisions as part of the peer review process.

The Joint Committee chairman and his staff have indicated that the entire body of supplementary amendments requested by Chairman Gulassa on behalf of the Task Force will be placed in print as part of AB 1725. (Of course, further changes may be made after additional consultations and hearings). Hence, the discussions of employment issues that follow in this item are based on the September 1 version of AB 1725 as hypothetically modified by all the requested changes submitted by Mr. Gulassa to Mr. Vasconcellos on August 15. The unified text reproduced in this item was prepared by the California Community College Trustees, because it will be some time before a new official version of the bill with all amendments is available in print.

Master Plan Commission Recommendations

In 1984, the Legislature established a blue-ribbon commission to re-examine higher education in California, starting with community colleges. This was the Commission for the Review of the Master Plan for Higher Education, with members appointed by the Governor, the Senate Rules Committee, the Speaker of the Assembly, and the governing authorities of the educational segments. *The Challenge of Change: A Reassessment of the California Community Colleges* was published by the Commission in March 1986, and represents an important source and comparison point for the present contents of the community college reform bill. All of the recommendations from *The Challenge of Change* dealing with employment issues are reproduced on the following page.

MASTER PLAN COMMISSION RECOMMENDATIONS ON EMPLOYMENT

The Commission recommends:

34. That the legislature delete from the Education Code existing credential requirements for Community College faculty and administrators.

35. That the Legislature authorize the Board of Governors, in consultation with the faculty, to (a) establish qualifications for employment of faculty and administrators, and (b) require that new faculty appointments, both full-time and part-time, be subject to peer review in addition to other administrative procedures.

36. That the Board of Governors prepare a plan for strengthening Community College faculty and staff affirmative action policies and programs and monitor and publish the results by college. The plan should include clear lines of district accountability for its success and ensure participation in and commitment to effective affirmative action by district trustees, administrators, and faculty alike.

37. That the Legislature repeal the statutory restriction on the employment of part-time faculty and authorize the Board of Governors to establish a statewide policy for the Community Colleges consistent with the objective of maintaining a core of experienced full-time faculty in each major department.

38. That the Board of Governors urge the Community Colleges to require part-time instructors to participate in student advisement and curricular development in addition to classroom instruction.

39. That the Legislature authorize Community College districts to employ those part-time faculty who teach six units or more on a contractual basis, as recommended in the following section.

40. That the Legislature authorize the Board of Governors to establish the number of years new full-time faculty shall serve prior to receiving tenure. The Commission supports a probationary period of at least four years.

41. That the Legislature authorize the Board of Governors to establish a formal system of peer review prior to the granting of tenure, and periodic evaluation of part-time, probationary, and tenured faculty by their peers, students, and administrators. Evaluation reports should be reviewed whenever faculty are considered for advancement in rank and salary.

42. That the Legislature authorize the Board of Governors to develop, and one or more districts to adopt, a pilot program of two- to five-year "rolling" contracts, coupled with periodic peer and student review, as an alternative to tenure.

43. That the Board of Governors urge the districts to adopt salary schedules for Community College faculty that are based primarily on academic rank.

44. That the Board of Governors urge the districts to compensate part-time faculty appropriately for duties required in addition to classroom teaching.

45. That the Board of Governors prepare and submit to the Legislature proposed legislation to amend the Education Employment Relations Act to delineate and protect the role of the academic senates with respect to policies affecting academic and professional matters.

46. That the Board of Governors develop and implement a plan to strengthen professional development programs on Community College campuses. The programs should serve faculty and administrators alike and be closely linked to regular evaluation and promotion procedures. This plan should be supported by an appropriation to the Board of Governors for allocation among the participating colleges.

58. That the Board of Governors strengthen the role of faculty senates with respect to the determination and adminstration of academic standards; course approval; hiring, retention, and evaluation of faculty; and other academic functions.

Board of Governors Positions

At its May 1987 meeting, the Board considered an agenda item entitled *Comprehensive Community College Reform Legislation: Assembly Bill 1725.* That item presented the early version of AB 1725 and discussed the background of the reform movement, and the relationship of the bill to the Master Plan Commission report and the report of the Joint Committee for Review of the Master Plan for Higher Education (*California Community College Reform*, January 1987). It also related the bill to previous policy positions expressed by the Board and the Chancellor.

As part of the agenda item, the Board adopted a number of "fundamental positions" for addressing the bill in its ongoing permutations. The fundamental positions on employment matters are reproduced on the following page.

BOARD OF GOVERNORS FUNDAMENTAL POSITIONS
(MAY 1987)

Faculty, Administrators and Staff

- A renewed emphasis should be placed upon faculty and staff affirmative action. The Board should be equipped with the resources to prepare a plan for strengthening affirmative action policies and programs. The plan should include clear lines of district accountability for its success, and the Board should monitor districts to ensure that success.

- The existing credentialing system for community college faculty and administrators should be abolished and replaced by new Board-established minimum qualifications for employment.

- Similarly, the Board should, after broad consultation on the matter, establish a process of peer review for the selection, retention and promotion of faculty.

- The probationary period for granting faculty tenure should be lengthened to at least four years.

- The Board should review the Education Employment Relations Act with regard to the delineation of roles and responsibilities of the Academic Senate and the faculty bargaining agents.

- Professional development programs and community college campuses should be strengthened in accordance with a Board-developed plan supported with resources from the state.

Issue 1: Minimum Qualifications for Faculty and Administrators

Present Law and Practice

Concern about faculty quality is predictable in a system which is undergoing overall reform scrutiny. Nevertheless, there is no specific evidence that faculty quality is low or declining. Berman-Weiler, in their 1985 study of community colleges for the California Roundtable, noted that "There are no statewide data that address the issue of faculty quality." They noted that, anecdotally, community college faculty are said to be about equally divided among excellent teachers, those who are "burned out," and competent but not outstanding teachers. No evidence exists to make a comparison with faculty quality at other types of colleges.

Student satisfaction with the quality of community college instruction is high, however. In a 1979 statewide public opinion poll,over 78 percent of the respondents who rated community college instruction found it to be excellent or good. A similar percentage was obtained in a separate poll in 1983. In the most comprehensive long-term study of California community college students ever undertaken, the Statewide Longitudinal Study (1978-81), 84 percent of the sample graded their colleges "A" or "B." Since the quality of instruction is largely a function of the ability of the teacher, it is evident that community college students think highly of their teachers.

Beyond general concern about faculty quality, specific dissatisfaction with the present credentialing system has existed for some time. California is one of only five states that continue to use a full teacher credentialing system in community colleges.* Because credentialing stems out of K-12 practice, some legislators and educational leaders see it as unnecessary and inappropriate for a postsecondary community college system. The May 1987 Board agenda item on *New Standards for Faculty and Administrator Employment* includes a history of credentials and the move to end them. Briefly, the Legislative Analyst found in 1981 that there was no justification for continuing credentials; then in 1985 the Legislature required the Chancellor's Office to submit a report on alternatives and recommendations for abolishing credentials. That report, called *Strengthening Standards for Community College Instruction*, was submitted to the Chancellor by Berman, Weiler Associates in March 1987. Concurrently, and in association with the Berman-Weiler report, the issue of credentials had been thrown into the cauldron of reform by the Commission on the Master Plan and the Joint Committee on the Master Plan. As a result, the AB 3409 Task Force was charged with devising a replacement for credentials.

* The incorrect notion that California is the only state with community college credentialing gained currency in the past few years and even found its way into the Master Plan Commission's *Challenge of Change*. But when Berman-Weiler surveyed other states for their study of credentials, they discovered that four other states use full credentialing systems and five more credential their vocational faculty.

The Berman-Weiler report is an excellent source of information on how the present credentialing system works, what its weaknesses are, and how community college faculty qualifications are set in other states. However, its recommendations differ in many specifics from the Task Force recommendations, and it is the Task Force's language that has been put into AB 1725.

No specific quality problems concerning administrators have been adduced on a statewide basis. However, because they are generally "certificated," like faculty, it has been assumed that they should be included in employment reform.

AB 1725 Provisions Concerning Minimum Qualifications

Intent language: AB 1725, Section 4, subsections o, p, and q are reproduced on the following page.

(o) Any set of laws, regulations, directives, or guidelines regarding community college faculty and administrator qualifications, evaluation, hiring, or retention should promote the efforts of local community colleges to ensure that their faculty and administration consists of:

(1) Teachers who can teach and who are experts in the subject matter of their curriculum.

(2) Counselors, librarians, and other instructional and student service faculty who can foster college effectiveness and who are experts in the subject matter of their specialty.

(3) Administrators who can lead, organize, plan, and supervise; who understand the needs of faculty and the learning process; and who value institutional governance based upon a genuine sharing of responsibility with faculty colleagues.

(p) (1) The laws, regulations, directives, or guidelines should help the community colleges ensure that the faculty and administrators they hire and retain are people who are sympathetic and sensitive to the racial and cultural diversity in the colleges, are themselves representative of that diversity, and are well prepared by training and temperament to respond effectively to the educational needs of all the special populations served by community colleges.

(2) All state and local policies, rules, and regulations regarding community college faculty and administrator qualifications, evaluation, hiring, or retention should strengthen faculty, administration, and board cooperation in matters related to those topics. They should also strengthen the role of the faculty as an authoritative, professional collegiate body.

(q) (1) In general, the appropriate focus of minimum qualifications is in helping the colleges to ensure that they will select faculty who are competent in subject matter and possess the basic academic preparation needed to work effectively at the college level. The minimum qualifications for all faculty should be the same except where the application of qualifications without differentiation would be clearly unreasonable or impractical.

(2) The minimum qualifications for administrators should help the colleges to ensure that they will select individuals who are competent to perform the kind of administrative responsibilities that administrators are normally required to assume, such as supervision, organizational planning, and budget development and administration, and who understand the needs of faculty and the learning process.

Comment: Particularly noteworthy is the last sentence of subsection (q) (1). This sentence represents a belief on the part of the Task Force that, under the present system, too many "limited service" and "provisional" teaching credentials have been issued; and that no valid rationale exists for setting lesser minimum qualifications for a part-time instructor. However, the clause that indicates uniform minimum qualifications may be "unreasonable" in some cases is intended to address the problems of certain vocational programs, especially trade and industrial courses; and the reference to "impractical" situations is intended to address the recruitment problems of small and isolated colleges.

Abolition of Credentials, and Grandfathering: AB 1725, sections 32 and part of 33 on abolition of credentials are reproduced on the following page.

LANGUAGE ON ABOLITION OF CREDENTIALS AND GRANDFATHERING

SEC. 32. Chapter 2 (commencing with Section 87200) of Part 51 of the Education Code is repealed.

SEC. 33. Chapter 2.5 (commencing with Section 87350) is added to Part 51 of the Education Code, to read:

CHAPTER 2.5. QUALIFICATIONS FOR COMMUNITY COLLEGE PERSONNEL

Article 1. General Provisions

87350. The plan for a new mechanism of faculty qualifications being developed by the Chancellor of the California Community Colleges pursuant to Chapter 1465 of the Statutes of 1986 shall include all of the following:

(a) A transition provision which would grandfather existing bargaining unit definitions.

(b) Consideration of projected California demographics.

(c) Consideration of affirmative action policies and programs.

Article 2. Minimum Qualifications and Hiring Criteria

87355. Any person employed under a credential as of December 1, 1988, including an instructor, librarian, counselor, student personnel worker, supervisor, administrator, or chief administrative officer, shall be entitled to serve under the terms of that credential until it terminates, and during the period the credential is effective, shall not be required to meet the minimum qualifications applicable after July 1, 1988. The board of governors shall adopt regulations as necessary to implement this exemption within 120 days of the effective date of this act.

Comment: Section 32 repeals the statutes governing issuance, revocation, etc. of community college credentials, but would still leave many references in the Education Code, Government Code, and other codes to "certificated personnel" in community colleges. A general clean-up would be needed.

Proposed ECS 87350 is unnecessary and inaccurate. The plan required by the statute referred to (AB 3409) was prepared by the Task Force, not the Chancellor's Office, and it already incorporates the listed elements.

The grandfathering provisions (dates need adjustment) would encompass anyone working under a credential at the time of enactment. It was the Task Force's intent to grandfather such persons in their current positions only. This was in the Task Force's initial recommendations but was not included in AB 1725. When transitions similar to this one have occurred in the past, usual practice has been to grandfather everyone holding the existing credential.

Substance of the New Minimum Qualifications: AB 1725, proposed new ECS 87356 on substance of the new minimum qualifications is reproduced on the following page.

LANGUAGE ON SUBSTANCE OF NEW MINIMUM QUALIFICATIONS

87356 (a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as a community college faculty member. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as a community college faculty member as any of the following:

(1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(3) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade, or industrial fields, either of the following:

(A) Possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment, plus two years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(B) Possession of an associate degree from an accredited institution in a discipline reasonably related to the faculty member's assignment, plus six years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(b) The board of governors shall adopt regulations establishing appropriate minimum qualifications for extended opportunity programs and services workers, pursuant to Section 69648.7.

(c) The board of governors shall adopt regulations establishing appropriate minimum qualifications for handicapped student programs and services workers, pursuant to Section 78440.5.

(d) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as an instructional or student services administrator defined in Section 87002. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as an instructional or student services administrator as all of the following:

(1) Possession of a master's degree.

(2) The equivalent of four years of demonstrated successful full-time experience in an accredited institution in an area related to the assignment.

(3) One year of formal training, internship, or leadership experience reasonably related to the administrator's administrative assignment, which may, but need not be, concurrent with the required full-time service.

(f) The minimum qualification for tenure shall be possession of a bachelor's degree.

Comments: This statute would mandate the broad outlines of the minimum qualifications as the Board must initially adopt them, while leaving open the possibility of the Board changing them in the future. This approach would give the Board more direct authority over minimum qualifications than it has at present. Currently,credential requirements are set forth permanently in statute and cannot be changed by the Board of Governors. However, the language is more prescriptive than the Master Plan Commission recommendation, which would simply delegate adoption of minimum qualifications wholly to the Board. The language thus represents a compromise. The Task Force considered that drawing up the initial new minimum qualifications was its proper responsibility pursuant to AB 3409, and did not wish to leave the task either to the Board of Governors or a later advisory body. On the other hand, it recognized the need to empower the Board as the permanent custodian of minimum qualifications, as proper to a postsecondary system.

Some of the changes that would occur under the new minimum qualifications are:

- The present authorization for an instructor, with local board approval, to teach any subject in which he has a "minor" would be eliminated.
- A minimum educational level of an associate degree in fields where no master's degree is given would be set (presently a high school diploma suffices).
- Six years occupational experience would be required for a person with an associate degree (presently four suffice).
- Appropriate certification to practice or licensure would be added as a requirement.

Subsections (b) and (c) are intended to protect the recently won status of EOPS and HSPS professionals as "certificated" personnel. The referenced code sections are 1984 statutes requiring statewide standards for such personnel.

Subsection (d) increases the present experiential requirement for an administrator from two years to four, and adds a new requirement for one year of formal training related to the assignment.

Subsection (e) may be redundant, because the bachelor's degree requirement for tenure is proposed to be enacted in a separate, new Education Code section dealing specifically with tenure.

Process for Establishing and Amending Minimum Qualifications: AB 1725, proposed new ECS 87357 on the process for establishing and amending minimum qualifications is reproduced on the following pages.

LANGUAGE ON PROCESS FOR ESTABLISHING AND AMENDING MINIMUM QUALIFICATIONS

87357. (a) In establishing and maintaining minimum qualifications pursuant to Section 87356, the board of governors shall do all of the following:

(1) With regard to minimum qualifications for faculty, consult with, and rely primarily on the advice and judgment of, the statewide Academic Senate, and with regard to minimum qualifications for instructional or student service administrators, consult with, and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators. In either case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups.

(2) At least once every three years, convene a representative group of community college teachers, counselors, librarians, and other instructional and student services faculty, administrators, and trustees to review the continued appropriateness and functionality of the minimum qualifications, and the adequacy of the means by which they are administered. The members of the group shall be broadly representative of academic and vocational programs in the curriculum from both urban and rural districts, and proportionally representative of ethnic minority communities. In addition, a majority of the group shall be current faculty members of the community colleges, nominated by the statewide Academic Senate, statewide faculty collective bargaining organizations, and other appropriate statewide faculty associations. If the group concludes that changes are necessary, it shall provide the board of governors with recommendations regarding amendments to the board's regulations. This group is strongly encouraged, and expected, although not required, to develop and recommend regulations for adoption by the board of governors to provide community college instructors who have little or no prior teaching experience with preservice or inservice training to effect the following:

(A) An understanding of the missions of the community colleges and the students served by them, and sensitivity to the individual goals and abilities of community college students.

(B) An understanding of effective teaching methods that facilitate learning and motivate students.

(C) Knowledge of district and campus policies, student support and counseling services, and other activities maintained by the college.

The regulations shall also provide for peer assistance and mentoring to assist new instructors in the successful performance of their professional responsibilities. The regulations, if developed, shall provide that faculty who seek peer assistance shall not be evaluated negatively because they have sought that assistance.

(b) The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prescribe by regulation a working definition of the term "discipline" and shall prepare and maintain a list of disciplines that are "reasonably related" to one another, as that phrase is used in the minimum qualifications. The initial list shall be distributed to the community college districts by July 1, 1988, for their use in applying the minimum qualifications for hire.

In formulating advice and recommendations to the board of governors regarding the definition of the term "discipline," the statewide Academic Senate shall consult with appropriate statewide organizations representing administrators and faculty collective bargaining agents. The statewide Academic Senate shall incorporate the advice of those groups into its recommendations to the board of governors, particularly as it relates to the practical ramifications of any proposed definition of the term "discipline" on issues of reassignment, transfer, and reduction in force.

The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prepare and maintain a list of disciplines in which the master's degree is not generally expected or available. The initial list shall be distributed to the community college districts by July 1, 1988, for their use in applying the minimum qualifications for hire.

Comments: The requirement that the Board rely "primarily" (but not necessarily exclusively) on the advice and judgment of the Academic Senate, while it does not bind the Board to follow the Senate's wishes, is intended to further the Task Force's general principle that state regulations should "strengthen the role of the faculty as an authoritative, professional collegiate body," similar to practice at UC and CSU. In regard to the comparable provision for administrators, the "appropriate statewide organization" the Task Force had in mind was the Association of California Community College Administrators (ACCCA).

The fact that there are two consultative mechanisms for minimum qualifications is the result of a split of opinion in the Task Force. Berman-Weiler had recommended the creation of a powerful professional commission in this regard, and while most of the Task Force preferred to empower the Academic Senate, one faction, particularly the California Teachers Association (CTA), favored the Berman-Weiler approach. The Task Force suggested that such a commission meet every three years. CTA also requested the inclusion of the latter half of subsection (a) (2), concerning preservice or inservice training for new teachers, which might more appropriately be consolidated with other provisions about professional development.

Subsection (b) requires the Board, with help from the Senate, to adopt definitions of the term "discipline," a list of disciplines "reasonably related" to one another, and a list of disciplines in which the master's degree is not required. The due dates for this work will need adjustment. In practical terms, these tasks place a large part of the responsibility, as well as staff work, on the Board of Governors (and the Academic Senate), to successfully implement the new system. But it is not entirely clear how some of this work would relate to the locally determined definitions of "faculty service areas" under proposed ECS 87743.2 and 87743.3.

Waiver of Minimum Qualifications: AB 1725, proposed new ECS 87359 on waivers of minimum qualifications is reproduced on the next page.

LANGUAGE ON WAIVERS OF MINIMUM QUALIFICATIONS

87359 (a) The board of governors shall adopt regulations authorizing local governing boards to employ faculty members who do not meet the minimum qualifications specified in the regulations adopted by the board pursuant to Section 87356. The regulations shall require all of the following:

(1) No one may be hired to serve as a community college faculty member under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in the regulations adopted by the board of governors pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(2) The process by which the governing board reaches the determination required by subdivision (a) (1) of this section shall be developed and agreed upon jointly by representatives of the governing board and the exclusive representative of the faculty, or, if no exclusive representative exists, the district or college academic senate, and approved by the governing board. The exclusive representative shall consult with the academic senate in developing its proposals.

(3) The criteria and standards by which the governing board reaches the determination required by subdivision (a) (1) of this section shall be developed and agreed upon jointly by representatives of the governing board and the district or college academic senate, and approved by the governing board.

(4) The procedures agreed to under subdivision (a) (2) shall include reasonable proedures to ensure that the academic senate or an appropriate committee of the senate as determined by the senate provides confirmation that each individual employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the minimum qualifications specified in the regulations adopted by the board of governors pursuant to Section 87356.

(b) The board of governors shall adopt regulations authorizing local governing boards to employ instructional and student services administrators who do not meet the minimum qualifications specified in the regulations adopted by the board pursuant to Section 87356. The regulations shall require both of the following:

(1) No one may be employed under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications to serve as an instructional or student services administrator that are at least equivalent to the minimum qualifications contained in the regulations of the board of governors. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(2) The process by which the governing board reaches the determination required by subdivision (b) (1) of this section shall include reasonable procedures to ensure that the academic senate or an appropriate committee of the senate as determined by the senate provides confirmation that each individual employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the minimum qualifications specified in the regulations adopted by the Board of Governors pursuant to Section 87356.

Comments: The language restricting waivers to cases of "equivalency" is substantially tighter than present provisions, which allow districts to employ the "best qualified" available candidate with a provisional credential in certain circumstances. Nevertheless, the new waiver language would plainly accommodate the district that wants to hire a vocational instructor with only a high school education but with lengthy industry experience, or an academic instructor who has an eminent reputation but not a master's degree.

Language relating to the local approval of waivers makes a distinction between a union role in developing the process for considering waivers, and an academic senate role in developing the criteria for waivers. In both cases, the jointly developed product must be "approved by the governing board." This is intended to emphasize the final legal and public responsibility of governing boards. In addition, the negotiated local process is required to include confirmation of "equivalency," for each waiver candidate, by the academic senate.

Similar confirmation is required for waivers of the minimum qualifications for administrators, but there is no union role in such waivers. It is important to note that what the Task Force proposes is not a required faculty confirmation for all administrative appointments, but only for those which don't satisfy the regular minimum qualifications. In practical terms, the numbers of administrative appointments which would require academic senate confirmation will likely be quite small -- far smaller than the number of faculty appointments made under waiver.

Auditing and Accountability: AB 1725, Section 28.5 and proposed new ECS 87358 on accountability are reproduced on the following page.

SEC. 28.5. Section 84040.1 is added to the Education Code, to read:

84040.1. (a) Each community college district shall include within its annual audit a review of the district's application of the minimum qualifications applicable to faculty and administrators of the district.

(b) In addition, the board of governors shall periodically designate a team of community college faculty administrators, and trustees, or any combination of these, to conduct audits of each community college district's application of minimum qualifications to faculty and administrators.

87358. In addition to the mandatory audit conducted pursuant to Section 84040.1, adherence to the minimum qualifications promulgated by the board of governors shall be monitored by each community college district through any or all of the following means: self-evaluation and peer review through the accrediting process; or audits conducted on a regular, or periodic basis or because of problems identified in a district's contracted audit and its response to the audit, by community college professionals under the direction of the board of governors.

Comments: Currently, compliance with credentials laws (for instructors only, not administrators) is audited for a sample of community college districts every year by the Department of Finance, as part of an attendance audit. Contracted district audits have also been used in past years to check credentials. The Task Force felt strongly that district practices should continue to be monitored from the State level to ensure that the additional discretion available under the new system is not abused. However, it never firmly settled on a single method of accountability. Every district would be required to include instructor and administrator minimum qualifications in its annual contracted audit, but it is not clear whether the additional audit teams envisioned by the Task Force would function continuously or be created only when contracted audits indicate a serious problem. There is no specific language regarding auditing of waivers to the regular minimum qualifications. It seems likely, however, that the intent would be that the audit include whether the required local process had been followed for each such waiver, and the reasons for the waiver recorded in the board appointment action, but not a review of the substance of the waiver decision itself.

Issue 2: Hiring and Affirmative Action

Present Law and Practice

Aside from the issue of part-time faculty, the AB 1725 provisions regarding hiring address three main subjects: hiring process; hiring criteria; and affirmative action.

In regard to hiring process, the extent of faculty involvement presently varies greatly from district to district. Faculty organizations have asserted that elimination of credentials will only work if faculty in all districts play a more active quality-assurance role in hiring. A Spring 1986 Academic Senate resolution, for instance, declared it "imperative that department/division members actively participate in the hiring and retention of all prospective faculty since they are best able to decide if an applicant has the appropriate academic records, proper technical experience, and an ability to present subject matter effectively." In the CSU system, a similar philosophy is embodied in a *Statement on Collegial Governance* adopted by the trustees, the language of which influenced the thinking of the AB 3409 Task Force.

Hiring (as opposed to setting minimum qualifications) has always been an exclusively local business in California community colleges, and except for affirmative action, there are no statutes or Board of Governors regulations currently controlling how the hiring process should work. Hiring criteria also have been set locally, to the extent such criteria exceed the statewide credentialing standards.

Affirmative action is certainly the aspect of hiring that receives the most attention in AB 1725. The legislation requiring affirmative action programs in California community colleges was originally passed in 1978. In December 1981, the Board approved comprehensive affirmative action regulations requiring each district to adopt and make good faith efforts to implement an affirmative action plan with specified elements, including goals and timetables.

The law requires the Chancellor's Office to provide assistance to local districts in adopting and maintaining affirmative action programs, to report on affirmative action to the legislature, and to disseminate guidelines for affirmative action programs. Data on gender and ethnicity have been collected for community college staff only since 1977, and are not collected at all on disability (despite the fact that the statutes and regulations include affirmative action for handicapped persons). The data since that time show that women and minorities have made progress in administrative jobs, but that relatively little has been achieved among faculty ranks:

Affirmative Action Progress
1977-85

Administrators

	Men	Women	White	Minority
1977	80.3%	19.7%	84.0%	16.0%
1985	71.4%	28.6%	77.4%	22.6%

Full-time Faculty

	Men	Women	White	Minority
1977	67.3%	32.7%	87.4%	12.6%
1985	65.1%	34.9%	85.1%	14.9%

Student Body

	Men	Women	White	Minority
1977	44.3%	55.7%	70.0%	30.0%
1985	43.5%	56.5%	66.3%	33.7%

Source: *Affirmative Action in California Community Colleges*, Chancellor's Office, February 1987.

Many members of the Legislature are aware of and concerned about these figures. At the behest of the Joint Committee, several affirmative action-related provisions have been added to AB 1725.

AB 1725 Provisions Concerning Hiring and Affirmative Action

Intent Language: AB 1725, Section 4, subsections (a) (r) (s) (t) and (u) are reproduced on the following pages.

INTENT LANGUAGE ON HIRING AND AFFIRMATIVE ACTION

SEC. 4. The Legislature finds and declares the following with regard to faculty, administrators, and staff of the California Community Colleges:

(a) The California Community Colleges will face a severe hiring crisis in the next 15 years. It is estimated that fully 55 percent of the current full-time faculty will retire in that period. In this regard there are three major interlocking issues which must be considered:

(1) There must be guarantees that the full-time positions which become open because of the retirement of these faculty members not be divided into part-time positions that are less expensive to fill than the full-time positions. The division of full-time positions that become vacant into part-time positions is currently occurring all too frequently. The maintenance of a fully staffed, full-time faculty is an essential element of a coherent program.

(2) Competition for qualified persons is intense, from both other sectors of education and private business.

(3) Given the emerging turnover in faculty vacancies, the next 15 years represent the last major "window of opportunity" to significantly change the ethnic mix of the faculty during the next 30 years. It will be imperative for the faculty to be sympathetic and sensitive to cultural diversity in the colleges especially when the student body is continually changing. One means of ensuring this is for the faculty to be culturally balanced and more representative of the state's diversity.

(r) (1) The pool of underrepresented individuals interested in faculty and administrative positions in the community colleges should be increased. Furthermore, practical and effective ways of finding and recruiting those individuals should be developed and maintained. The state's leadership in this effort is appropriate and urgently needed.

(2) The hiring process for administrators and faculty (both temporary and permanent) should be designed so that both faculty and administrators take real responsibility for meeting affirmative action goals and ensuring that affirmaive action considerations effectively influence hiring decisions.

(s) (1) No single approach to hiring faculty can guarantee attainment of the colleges' affirmative action goals and consistent selection of qualified individuals. Nevertheless, any hiring process adopted by a college should require the joint and cooperative exercise of responsibility by the faculty, administration, and board and should reflect the differing source of each participant's authority and the kind of responsibility that authority conveys.

(2) The governing board of a community college district derives its authority from statute and from its status as the entity holding the institution in trust for the benefit of the public. As a result, the governing board and the administrators it appoints have the principal legal and public responsibility for ensuring an effective hiring process.

(3) Faculty members derive their authority from their expertise as teachers and subject matter specialists and from their status as professionals. As a result, the faculty has an inherent professional responsibility in the development and implementation of policies and procedures governing the hiring process.

(4) Beyond requiring a joint and cooperative exercise of responsibility, the hiring process should be focused on ensuring that the community colleges will select teachers who can teach and who are experts in the subject matter of their curriculum; and counselors, librarians, and other instructional and student services faculty who can foster community college effectiveness and who are experts in the subject matter of their specialty. This means that the colleges may establish criteria for hiring that go well beyond the minimum qualifications set by regulation. The establishment of additional criteria of this sort should be expected and encouraged.

(5) The focus of the hiring process for administrators is slightly different from the focus in hiring teachers. In hiring teachers, the goal is to find people who can teach, but in hiring administrators the goal is to ensure that the community colleges will select administrators who are competent to perform the kind of administrative responsibilities that administrators are normally required to assume in the context of the operation and programs of the community colleges.

(t) The state should provide the community colleges with enough resources and a sufficiently stable funding environment to enable them to predict their staffing needs and to establish highly effective hiring processes. While the precise nature of the hiring process for faculty

should be subject to local definition and control, each community college should, in a way that is appropriate to its circumstances, establish a hiring process that ensures that:

(1) Emphasis is placed on the responsibility of the faculty to ensure the quality of their faculty peers.

(2) Both faculty members and administrators participate effectively in all appropriate phases of the process.

(3) Positions to be filled are normally identified through a well defined, thoughtful, planning process.

(4) The time between the announcement of each position and the selection of a candidate for hire is long enough to allow a thorough, complete, and thoughtful search.

(5) Clear and complete job descriptions, including all job-related skills requirements and any additional qualifications recommended by the faculty when appropriate, are prepared for each position, and these job descriptions are reviewed before each position is announced, to ensure conformity with the community college's affirmative action and nondiscrimination commitments.

(6) All participants in the process are given appropriate training in affirmative action procedures and the affirmative action goals and timetables of the community college so that success in reaching those goals is better assured.

(7) Individuals, preferably minorities or women, who are knowledgeable about and responsible to the community college's affirmative action goals are included on all selection committees or similar groups.

(8) Final hiring decisions are, whenever reasonably possible, made during the regular academic year and promptly communicated to the faculty; the expectation that faculty recommendations regarding the hiring of faculty will normally be accepted is reinforced; and only in exceptional circumstances, and for compelling reasons communicated to the selection committee and to the president of the academic senate of the college, will someone be hired as a faculty member who has not been found to be among the best qualified by the faculty.

(u) The state should provide the community colleges with enough resources and a sufficiently stable funding environment to enable them to predict their staffing needs and to establish highly effective hiring processes. While the precise nature of the hiring process for administrators should be subject to local definition and control, each community college should, in a way that is appropriate to its circumstances, establish a hiring process which ensures that:

(1) Representatives of the faculty and other employees whose circumstances at work will be directly affected by the employment of the administrator participate effectively in all appropriate phases of the process.

(2) Positions to be filled are normally identified through a well defined, thoughtful, planning process.

(3) The time between the announcement of each position and the selection of a candidate for hire is long enough to allow a thorough, complete, and thoughtful search.

(4) Clear and complete job descriptions that include all job-related skills requirements are prepared for each position and these job descriptions are reviewed before each position is announced, to ensure conformity with the community college's affirmative action and nondiscrimination commitments.

(5) All participants in the process are given appropriate training in affirmative action procedures and goals and timetables of the community college, so that success in reaching those goals is better assured.

(6) Individuals, preferably minorities or women, who are knowledgeable about and responsive to the college's affirmative action goals are included on all selection committees or similar groups.

(7) Final hiring decisions are, whenever reasonably possible, made during the regular academic year and promptly communicated to the faculty and staff.

Comments: Subsection (a) expresses general concern about recruitment of community college faculty. Subsection (r) expresses the Legislature's desire for more effective affirmative action. Subdivision (s) states several philosophical underpinnings of the Task Force's recommendations on hiring; in particular, the idea that hiring criteria may go well beyond minimum qualifications (the Task Force felt that the local hiring process should address teaching talent, whereas the minimum qualifications should address subject matter expertise). The language defining the sources of authority for governing boards vs. faculties draws conceptually on the CSU *Statement of Collegial Governance.*

Subdivision (t) addresses how the hiring process ought to work for faculty. The Task Force decided not to recommend either a new Education Code Section or Board of Governors regulations addressing hiring. Although the Task Force considered asking for statewide hiring process "guidelines," in the end its positions on hiring process were expressed in AB 1725 intent language. Although intent language does not have the force of code language, this particular intent language includes elements which the Task Force felt are essential to making the new system work properly.

No distinction is drawn in terms of the hiring process between full-time and part-time faculty, although the Task Force was well aware that these desiderata are more difficult to attain in the hiring of part-timers. Items (6), (7), and (8) are particularly noteworthy. Items (6) and (7) call for affirmative action measures; item (8) contains several provisions designed to ensure that the hiring process is collegial, particularly "the expectation that faculty recommendations regarding the hiring of faculty will normally be accepted." This is the AB 1725 response to the Master Plan Commission recommendation that "new faculty appointments . . . be subject to peer review." However, because the Task Force was sensitive to the fact that hiring problems frequently relate to budget problems, the whole subdivision is prefaced by the statement that community colleges should receive "enough resources and a sufficiently stable funding environment . . . to establish highly effective hiring processes."

Subdivision (u) addresses the administrator hiring process, with many of the same provisos used for faculty hiring. Noteworthy here is the recommendation that faculty and other employees should participate in administrator hiring.

Hiring Criteria: AB 1725, proposed new ECS 87360 is reproduced on the following page.

LANGUAGE ON HIRING CRITERIA

Article 3. Hiring Criteria

87360 (a) In establishing hiring criteria for faculty, community college districts shall, in consultation with the academic senate, identify criteria that address the following as appropriate:

(1) Aptitude for teaching, counseling, or professional service.

(2) Understanding and acceptance of the unique circumstances of work in the community colleges, especially the circumstances created by the diverse academic, socioeconomic, racial, cultural, and ethnic backgrounds of community college students.

(3) Proficiency in English, and possession of good oral and written communication skills.

(b) In establishing hiring criteria for administrators, community college districts shall identify criteria that address the following as appropriate:

(1) Training or experience in human resource management, planning and budgeting, organizational development, program and curriculum development, and related subject areas.

(2) Understanding and acceptance of the unique circumstances of work in the community colleges, especially the circumstances created by the diverse academic, socioeconomic, racial, cultural, and ethnic backgrounds of community college students.

(3) Proficiency in English, and possession of good oral and written communication skills.

Comments: Hiring criteria, it was felt by the Task Force, presented a way to express some desirable faculty and administrator attributes that should be considered locally, but which should not be included as statewide minimum standards because they are not quantifiable, or their relative importance varies with the particular district.

The fact that there are only a few, general hiring criteria reflects the fact that there was little in this area that the Task Force felt was so universally applicable it could be included in statute. However, it is noteworthy that hiring criteria would be required to be identified in consultation with local senates.

The recommendation that "proficiency in English" be a criterion was added largely in response to reports of problems at the University of California, where some teaching assistants could not communicate adequately in English. However, concern has been expressed that this recommendation might be somehow construed as creating an obstacle for people with non-native or dialect accents.

Affirmative Action: AB 1725, Sections 30, 31, and 42 on affirmative action is reproduced on the following pages.

SEC. 30. Section 87102 of the Education Code is amended to read:

87102. (a) The governing board of each community college district shall submit, not later than January 1, 1980, to the office of the Chancellor of the California Community Colleges an affirmation of compliance with the provisions of this article. The affirmative action employment program shall have goals that ensure participation in, and commitment to, the program by district personnel and timetables for its implementation. The governing board of each community college district shall be held accountable for the success or failure of its affirmative action employment program. The plans shall be a public record within the meaning of the California Public Records Act.

(b) The governing board of each community college district shall publish and distribute, not later than January 1, 1989, to the Chancellor of the California Community Colleges, a record of the success rate of hiring employees through its affirmative action employment program. This publication shall be a public record within the meaning of the California Public Records Act.

SEC. 31. Section 87104 of the Education Code is amended to read:

87104. (a) The office of the Chancellor of the California Community Colleges, out of funds appropriated for these purposes, (1) shall provide assistance to local community colleges in adopting and maintaining high-quality affirmative action programs; (2) report to the Legislature, by July 1, 1980, regarding the number of districts which have adopted and are maintaining affirmative action programs, including the effectiveness of the programs in meeting the intent of this article; (3) develop and disseminate to public community college districts guidelines to assist these agencies in developing and implementing affirmative action employment programs; and (4) shall establish a technical assistance team to review the affirmative action plan of each community college district that fails to comply with the requirements of its plan and to take the appropriate action or actions to effect compliance.

(b) The board of governors shall establish, by July 1, 1988, within the chancellor's office or through other means as deemed necessary, a major service function to assist community college districts in identifying, locating, and recruiting qualified members of underrepresented groups, and in establishing and maintaining effective affirmative action hiring procedures.

SEC. 42. Section 87616 is added to the Education Code, to read:

87616. There is hereby created in the State Treasury a fund which shall be known as the Special Instructional Fund. The money in the fund is appropriated to the Board of Governors of the California Community Colleges for allocation to the community college districts for the purpose of funding the development of pilot and experimental programs in the community college districts described in this section.

The fund shall be a means of funding the development of pilot and experimental programs in community college districts which have made significant progress, as determined by the board of governors, in meeting affirmative action goals. "Significant progress," for the purposes of this section, means hiring probationary full-time faculty.

Comments: The new language in ECS 87102, subsection (a), is the clause that states that affirmative action goals should "ensure participation in, and commitment to, the program by district personnel," and the second to the last sentence, which holds each governing board accountable for results. Subsection (b) is also new.

More substantive are the proposed changes to ECS 87104 and the addition of ECS 87616. The existing statute would be strengthened by adding new subsection (a) (4), requiring "technical assistance teams," and subsection (b), requiring a major recruitment and affirmative action assistance function in the Chancellor's Office. (The bill appropriates $224,000 for these purposes.)

The proposed new statute, ECS 87616, creates a Special Instructional Fund (funded at $4 million) which the Board of Governors would use to reward districts for making good affirmative action progress.

Miscellaneous Hiring Provisions AB 1725, proposed new ECS 87359.5 and Section 53.14, are reproduced on the following page.

87359.5. Within 120 days of the effective date of this chapter, the board of governors shall have reviewed or contracted for review of, the job relevance of the requirements of Sections 87408, 87408.5, 87408.6, and any other physical fitness tests or examinations, and other conditions of employment, applicable to community college personnel.

SEC. 53.14. (a) The governing board of each district shall determine whether it would be beneficial for various community college departments to enter into agreements with the analogous graduate department at the University of California or California State University campus closest in proximity to the community college, to provide part-time temporary teaching positions in the district for advanced university graduate students.

(b) In determining whether the development of part-time temporary teaching positions would be beneficial for the district, the governing board shall consider that the part-time temporary teaching positions, if implemented, would be limited to the following individuals:

(1) Advanced graduate students with prior proven teaching experience.

(2) Advanced graduate students teaching in areas consistent with the subject area of their graduate program.

(3) Advanced graduate students who qualify for employment in positions requiring certification.

(4) Advanced graduate students selected by the pertinent community college department and administrators from among a list of candidates provided by the University of California or the California State University graduate department.

(c) The governing board shall also consider whether the following intended purposes would be served by the development of part-time temporary teaching positions:

(1) Be a form of financial aid to the graduate students, especially for minority and disadvantaged students.

(2) Provide access to graduate students who wish to enter into the teaching profession at the community college level.

(3) Guarantee community college departments one or two part-time positions each year.

(d) It is not the intent of this section, in the event that part-time temporary teaching positions are established, to displace persons then currently teaching part time or full time with graduate students who would teach on a temporary part-time basis.

Comments: The Education Code sections that the Board is asked to review deal with required medical certificates for active faculty and for employed retirants, and required tuberculosis tests.

The suggestion in Section 53.14 that community colleges recruit faculty directly from proximate graduate departments stems from the work of the Joint Committee. The Joint Committee's report implied that such relationships could serve affirmative action purposes as well as the other purposes listed. However, no mention of affirmative action appears in AB 1725 in reference to these programs.

Issue 3: Evaluation

Present Law and Practice

The Master Plan Commission's *Background Papers for the Challenge of Change* contains an interesting discussion of the contrast between the Educational Employees Relations Act (EERA or the Rodda Act) and the Higher Education Employee-Employer Relations Act (HEERA) which is particularly relevant for this issue. The area of evaluation is a sensitive one in regard to collective bargaining and in regard to the identity of community colleges as institutions evolving out of high schools and striving toward the status of the public universities. EERA states that "procedures to be used for the evaluation of employees" are specifically included in the scope of union representation. On the other hand, HEERA specifically excludes from the scope of representation "procedures and policies to be used for the appointment, promotion, and tenure of members of the academic senate, [and] the procedures to be used for the evaluation of the members of the academic senate [i.e., the tenure-track faculty]." The rationale behind this exclusion is stated thus: "The Legislature recognizes that joint decision making and consultation between administration and faculty or academic employees is the long-accepted manner of governing institutions of higher learning . . . the principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved."

The use of the term "peer review" by the Master Plan Commission and the Joint Committee in their reports, and in the language of AB 3409 last year, indicates that there is a desire to move community college practices toward the university model. Yet there are certain essential differences between community colleges and universities which may affect evaluation practices. For instance, the long probationary period in universities (seven years at UC and six years at CSU) is intended to allow time for scholarship and publication; yet community colleges are teaching institutions and community college instructors are not expected to publish. Similarly, the emphasis on peer review to the exclusion of review by administrators and students at the university results from the belief that only peers are qualified to judge the value of one's scholarly contributions. But administrators and students are quite competent to contribute to judgments about how good a teacher one is.

A survey taken by the Chancellor's Office in 1981 showed that team evaluation (by one or more administrators and one or more peers) was the most frequently used evaluation method for both probationary and permanent faculty, but that evaluation solely by administrators ran a close second. In some districts, faculty were able to choose whether they wished to be evaluated by an administrator or a team (or, in the case of tenured faculty, to submit a self-evaluation). Student evaluations were included in more than half the districts. There is presently no law requiring evaluation of part-time faculty, and the survey revealed that nearly a third of

districts had no formally defined evaluation policy for them. Of the remainder, the great majority evaluated their part-time faculty administratively only.

AB 1725 Provisions on Evaluation AB 1725, Section 4 (v), ECS 87610.1 (a), and ECS 87663 are reproduced on the following pages.

(v) (1) The evaluation process should promote professionalism, enhance performance, and be closely linked with staff development efforts.

(2) The evaluation process should be effective in yielding a genuinely useful and substantive assessment of performance. Among other things, this requires an articulation of clear, relevant criteria on which evaluations will be based.

(3) The evaluation process should be timely. This requires that evaluations be performed regularly at reasonable intervals.

(4) The specific purposes for which evaluations are conducted should be clear to everyone involved. This requires recognition that the principal purposes of the evaluation process are to recognize and acknowledge good performance, to enhance satisfactory performance and help employees who are performing satisfactorily further their own growth, to identify weak performance and assist employees in achieving needed improvement, and to document unsatisfactory performance.

(5) A faculty member's students, administrators, and peers should all contribute to his or her evaluation, but the faculty should, in the usual case, play a central role in the evaluation process and, together with appropriate administrators, assume principal responsibility for the effectiveness of the process.

(6) The procedures defined by negotiations should foster a joint and cooperative exercise of responsibility by the faculty, administration, and governing board of the community college and should reflect faculty and administrator expertise and authority in evaluating professional work as well as the governing board's legal and public responsibility for the process.

SEC. 38.3. Section 87610.1 is added to the Education Code, to read:

87610.1. (a) In those districts where tenure evaluation procedures are collectively bargained, the faculty's exclusive representative and the local academic senate shall seek to work together in developing policies and procedures regarding tenure evaluation that will become the topic of negotiations. Furthermore, the governing board and the exclusive representative of the faculty, or, where collective bargaining is not applicable, the academic senate, shall consider incorporating elements substantially like the following into the tenure evaluation procedures established in the district:

(1) A clear articulation of the criteria to be used in reaching a tenure decision, the substance of which does not change during the faculty member's probationary period.

(2) Early involvement of peers with the probationary faculty member, ideally within months of his or her initial appointment, for the purposes of all of the following:

(A) Assisting the faculty member through example, recommendation, referral, and advice in realizing his or her potential as a teacher, counselor, or other professional.

(B) Introducing the faculty member to the college's governance process and the culture of the institution.

(C) Fostering the faculty member's understanding and acceptance of the unique circumstances of work in the community colleges, especially the circumstances created by the diverse academic, socioeconomic, racial, cultural, and ethnic backgrounds of community college students.

(3) The establishment of special tenure review committees for the purpose of evaluating whether the granting of tenure to a probationary faculty member is warranted, and preparing a recommendation regarding tenure to the president of the college and the governing board. While these committees should be composed primarily of tenured faculty members, they should also include administrators and students.

(4) Adherence to a procedure that ensures that the governing board receives and understands the advice and recommendations of both the administration and the faculty, especially where the recommendations differ.

SEC. 45. Section 87663 of the Education Code is amended to read:

87663. (a) Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every three academic years. Temporary employees shall be evaluated at least once every six regular semesters, or once every nine regular quarters, as applicable.

(b) Whenever an evaluation is required of a certificated employee by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d) The peer review process shall be on a departmental or divisional basis, and shall address the forthcoming demographics of California, and the principles of affirmative action. The process shall require that the peers reviewing are both representative of the diversity of California and sensitive to affirmative action concerns, all without compromising quality and excellence in teaching.

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process.

(f) In those districts where evaluation procedures are collectively bargained, the faculty's exclusive representative and the local academic senate shall seek to work together in developing policies and procedures regarding evaluation that will become the topic of negotiations. The district governing board and the exclusive representative of the faculty, or, where collective bargaining is not applicable, the academic

senate, shall consider the following points and, to the extent practicable, seek to incorporate them in the evaluation procedures established in the district:

(1) Joint and cooperative exercise of responsibility by the faculty, administration, and governing board should be encouraged.

(2) It should be recognized that faculty members, as expert practitioners and subject matter specialists, can best evaluate the substance of the full range of professional work performed by their peers, while local governing boards, and the administrators they appoint, have specific legal and public responsibilities for the effectiveness of the evaluation process.

(3) Academic senates can speak authoritatively on professional matters related to evaluation, and their ability to do so should be recognized.

(4) Evaluation procedures should be clearly connected with specific staff development activities and programs.

(5) Evaluation procedures should include a process for regular student evaluations of teaching faculty that supplement other forms of evaluation.

(g) A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights by requiring the college to prove cause for a decision not to retain the faculty member.

(h) The board of governors shall adopt regulations to require that local governing boards establish and widely disseminate written evaluation procedures for administrators.

Comments: The language of AB 1725 relating to evaluation recognizes both peer review and collective bargaining. The negotiability of evaluation procedures is affirmed. The language also reflects the Task Force's principle of division of professional vs. legal responsibility between the faculty and local board.

ECS 87610.1 (a proposed new section) would specifically address evaluation for tenure. ECS 87663 (an existing section proposed for amendment) would cover all evaluations, and makes reference in one subsection to tenure evaluations also.

The minimum frequency would remain the same for contract (probationary) faculty, once a year. For tenured faculty it would decline from once every two years to once every three years. (This stems from concern on the part of the task force about workload when a meaningful peer process with specified elements is to be followed for every teacher.) Evaluation would for the first time be required for temporary (part-time) faculty, at least every three years. In addition, a requirement would for the first time be established that written evaluation procedures for administrators be adopted. The Board of Governors would be responsible for passing regulations requiring districts to adopt such procedures.

ECS 87663 contains some language derived from the Joint Committee's report [subsections (c) and (d)], which is couched in directive terms ("Evaluations *shall* include peer review" and "*shall* be departmental"). In contrast, the language derived from Task Force recommendations (beginning with subdivision (e)) is only suggestive, as is the language of ECS 87610.1 on tenure evaluations. Actual evaluation processes are left to local bargaining, and the bargaining agent is asked to "work together with the academic senate" and to "consider . . . and, to the extent practicable, seek to incorporate" certain minimum elements in the evaluation process.

Subdivision (1) of the findings language, and subdivision (f) (4) of ECS 87663, both state that evaluation should be clearly linked to staff development activities. It was the sense of the Task Force that unless there are enhanced staff development programs, enhanced evaluation requirements would serve little useful purpose.

Another noteworthy point is subdivision (a) (4) of ECS 87610.1. There was discussion in the Task Force of asking for some stricture that would prevent the local board from awarding tenure when the faculty recommends against it; however, it was ultimately realized that the final legal authority of the board could not be constrained in this fashion.

Issue 4: Tenure

Present Law and Practice

It appears there has been little consistency in probationary policy among the segments of public education in California. The probationary period at the University of California has traditionally been seven years. At California State University, the probationary period was four years until 1983, when it was lengthened to six years. In the K-12 schools, permanent status took three years to acquire, for at least twenty years prior to 1983. In that year, SB 813, the major school reform bill, reduced K-12 probation from three years to two. Community college faculty probation has been set at two years since 1971. The present tenure provisions requiring a decision on permanent status by March 15 of the second year of employment were enacted in 1971 when community college employment law was separated from K-12 law.

The validity of having tenure at all has sometimes been questioned (*Background Papers for the Challenge of Change* contains a good skeptical discussion of tenure); however, tenure rests on long-established presumptions stemming from both higher education philosophy and public employment policy. In terms of the former, the American Association of University Professors tenure guidelines are echoed in an Academic Senate resolution which declares that "Tenure is essential to the protection and preservation of academic freedom . . . Tenure enables teachers to dare to say what they think, to dare to talk with each other as a community of scholars, and to dare to bring into discussion views that may differ from those that currently prevail, and tenure thereby contributes to the advancement of truth." The value of job security has long been recognized for all forms of public employment, including teaching, both as a means to counteract political patronage, and as an inducement to public service where compensation in often uncompetitive with private sector jobs.

Another tenure issue that has arisen from time to time is administrative tenure. Certificated administrators currently can be treated as regular (tenured) classroom teachers for purposes of " right of return" to faculty positions if they are dismissed from their administrative posts. Their seniority is based on the number of years of service in the district, including administrative service, and therefore they may be able to "bump" other faculty, even if they have never taught in that or any district. The Task Force drew up provisions designed to ensure that administrators who are reassigned to teaching positions must serve a probationary period as a teacher before acquiring faculty tenure.

AB 1725 Provision on Tenure

Intent Language: AB 1725, Section 4, subsections (l), (m), and (w) are reproduced on the following page.

(*l*) The tenure system is an important prerequisite for the maintenance of academic freedom, continuity in academic and vocational programs, and development of a faculty committed to the long-term health of the community colleges. At the same time, the tenure system is a central part of the governance of the colleges. Thus, the determination of standards for tenure, procedures governing tenure, and the actual granting of tenure determine in large part the substantive direction of the colleges.

(m) The current tenure system lacks adequate participation by the faculty, provides an inadequate probationary period for the evaluation of permanent faculty, and does not provide uniform systemwide procedures for due process and grievance.

(w) Faculty tenure fosters academic freedom and should be maintained. For administrators, the need for job security justifies appointments of reasonable duration, but no one should obtain tenure or permanent status in an administrative position. A person should be granted tenure as a faculty member only after it has been determined through a process of evaluation that he or she is, and will likely continue to be, a positive asset to the community college. In other words, the award of tenure should be an affirmative act, rather than the result of default. The faculty's inherent professional reponsibility to ensure the quality of their faculty peers requires faculty review to be at the heart of the evaluation process leading to tenure decisions.

Comment: In subsection (l), the importance of tenure in protecting academic freedom for faculty is noted; subsection (w) implies that the same principle does not apply for administrators, and hence no one should obtain tenure in an administrative position. The principle stated in subsection (w) that tenure should always be an "affirmative act, rather than the result of default," had an influence on the recommendations of the Task Force in regard to tenure and probation appeals (see language on "Grievance and Hearing Rights").

Length of Probationary Period, Required Notice, and Terminal Year: AB 1725, Sections 35, 36, 37, and 38 are reproduced on the following page.

LANGUAGE ON LENGTH OF PROBATION AND PERIOD,
REQUIRED NOTICE, AND TERMINAL YEAR

SEC. 35 Section 87605 of the Education Code is amended to read:

87605 The governing board of a district shall employ faculty for the first academic year of his or her employment by contract. Any person who, at the time an employment contract is offered to him or her by the district, is neither a tenured employee of the district nor a probationary employee then serving under a second or third contract entered into pursuant to Section 87608 shall be deemed to be employed for "the first academic year of his or her employment." A faculty member shall be deemed to have completed his or her first contract year if he or she provides service for 75 percent of the first academic year.

SEC 36. Section 87608 of the Education Code is amended to read:

87608 If a contract employee is working under his or her first contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following academic year.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

Add Educ. Code 87608.5 as follows:

If a contract employee is working under his or her second contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following two academic years.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

SEC. 37 Section 87609 of the Education Code is amended to read:

87609 If a contract employee is employed under his or her third consecutive contract entered into pursuant to Section 87608, the governing board shall elect one of the following alternatives:

(a) Employ the probationary employee as a tenured employee for all subsequent academic years.

(b) Not employ the probationary employee as a tenured employee.

Comments: Section 35 addresses a problem of current law, whereby a person is considered to have had his first probationary year regardless of when, during the academic year, he is hired into a tenure-track position. Thus a person hired in the spring term has only one and a half years of probation, rather than two. Under the new language, a person hired early in the fall would be considered to be on his first probationary year; however, if a person were hired after approximately mid-October, the first year would not count as a probationary year.

Sections 36 and 37 establish a "1 + 1 + 2" pattern for the probationary period; i.e., at the end of the second year the local board, if it wished to continue the tenure-track employee, would have to offer a two-year contract. The rationale behind this, from the Task Force's viewpoint, is that, by the end of two years, those persons evidently unsuited for tenure have been identified; the remaining doubtful or borderline candidates will be those who show potential but who need additional training, mentoring, and experience before it can be determined whether they are able to realize their potential. The two-year contract would give time for substantial uninterrupted development, peer guidance, and self- improvement efforts without the tension of an additional decision point at the end of the third year, while still leaving the final decision to the end of the fourth year.

ECS 87610, subsections (a) and (b) are simple amendments to current law requiring notice by March 15. Subsection (c) establishes the fifth, terminal year. This terminal year stems out of the Joint Committee's report, but was recommended against by the Task Force. Several questions arise regarding the terminal year: 1) Is it more appropriate for community colleges to follow the K-12 model, which includes the March 15 notification date but not the terminal year, or the university model, which includes the terminal year but not the March 15 notification date? 2) In that the present March 15 notification requirements are retained in AB 1725, is it necessary, in order to give rejected teachers adequate job-hunting time, to also incorporate a terminal year (thus providing the protections of both the K-12 model *and* the university model)? 3) Why is a terminal year provided only for the person rejected at the end of the full four-year probationary period, and not for the person rejected after one or two years?

Bachelor's Degree for Tenure: A proposed new code section (not yet numbered) is reproduced on the following page.

LANGUAGE ON BACHELOR'S DEGREE FOR TENURE

Add Educ. Code Section as follows:

The minimum qualification for tenure as a community college faculty member shall be a Bachelor's Degree from an accredited institution, or equivalent foreign degree. Notwithstanding this section, the governing board may grant tenure to faculty members who do not meet the minimum qualification for tenure specified in this section if both of the following are met:

(a) The governing board determines that rare and compelling reasons exist justifying the action. The reasons for the governing board's determination shall be reflected in its action granting tenure to the individual.

(b) The process by which the governing board reaches the determination required by subdivision (a) of this section shall include reasonable procedures to ensure that the academic senate or an appropriate committee of the senate as determined by the senate provides confirmation that rare and compelling reasons exist justifying the grant of tenure under this section.

Comments: This section would require a trade or industrial instructor hired with only an associate degree to obtain a four-year degree (in any major) for tenure. The Task Force felt that all community college instructors should have a bachelor's degree so that all may contribute to improving the level of general education and literacy among their students. The Berman-Weiler report had recommended a bachelor's degree as a minimum hiring requirement; however, the recruitment problems in trade and industrial fields with such a requirement might be very great. Therefore, requiring a bachelor's degree for tenure (but not for initial hire) was adopted as a compromise, with a provision to waive the requirement in rare cases, with academic senate confirmation. While not explicitly stated in the bill language, it was the Task Force's understanding that existing collective bargaining law would make the procedures used in making the waiver determination a subject of negotiations.

Grievance and Hearing Rights in Tenure Denial: AB 1725, ECS 87610.1 (b) (c) and (d), and ECS 87611 are reproduced on the following page.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. Allegations that the community college district in a decision to re-appoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, such allegations shall proceed to hearing in accordance with Section 87740.

Arbitration as used in this Section 87610.1 refers to advisory as well as final and binding arbitration.

(c) Any grievance brought pursuant to the provisions of subpart (b) above may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with the Government Code Section 3540 et seq. The exclusive representative shall have no duty of fair representation with respect to taking any such grievances to arbitration. If the internal grievance procedure results in arbitration, the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration without the approval of the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead shall only affect the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee's share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to 87610 (b). The arbitrator shall have authority to issue an appropriate make-whole remedy, which may include, but need not be limited to, such remedies as backpay and benefits, re-employment in a probationary position, and reconsideration. The scope of any procedures for reconsideration of tenure shall be a mandatory subject of bargaining under Government Code Section 35490 et seq.

SEC. 39. Section 87611 of the Education Code is amended to read:

87611 A final decision reached following a grievance or hearing conducted pursuant to Section 87610.1 (b) shall be subject to judicial review pursuant to CCP Section 1094.5.

Comments: The AB 3409 Task Force briefly retained the services of two attorneys -- Robert Bezemek representing the faculty organization perspective, and Larry Frierson representing the management perspective -- who consulted on this detailed language. It is difficult for the layman to anticipate the practical effects of such specific language on the complex human and legal situations that sometimes occur when faculty are rejected from probation. The most important consideration, though, is whether the proposed language will effectuate two basic principles: that faculty have the right to fair treatment, and that tenure should not be awarded solely because of procedural error. These principles are most clearly seen in the proposed amendments to ECS 87663 which deals with evaluations (see "Language on Evaluation" for full text). Proposed new subdivision (g) of that section states that "A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures . . . [which] ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights by requiring the college to prove cause for a decision not to retain the faculty member."

The Joint Committee report recommended that termination of a probationary faculty member during the first two years should not be subject to "procedural due process." If the meaning of that recommendation was that no alleged unfairness should be grievable or appealable during the first two years, than the language does not effectuate that recommendation. If the intended meaning was that an award of tenure should not be a remedy for demonstrated violations of process during the first two years, then the language does effectuate the recommendation. The thrust of subsection (b) is that, during the first two years, a faculty member could appeal an alleged violation of the district's established process, but not the reasonableness of the reappointment decision itself; at the final tenure decision point (after four years), both process violations and the reasonableness of the decision would be appealable. Subsection (d), however, provides that an arbitrator could not grant tenure as a remedy (although the arbitrator could order reconsideration or an additional probationary year).

The one instance in which an arbitrator could grant tenure would be failure to provide the required notice of final tenure decision by March 15 of the fourth year. The rationale behind this is that, if an additional probationary year were the only remedy for failure to provide notice, a district could theoretically maintain a person on probation indefinitely.

It is not entirely clear how this new language would interact with various existing provisions of the Education Code which would not be eliminated; for example, ECS 87740 which presently defines appeal and hearing procedures in great detail. It is possible that, to realize the intent of the reform proposals, additional changes to the code would have to be made.

Code of Civil Procedures Section 1094.5, referenced in the last section of language on grievance and hearing rights, is a statute titled "Inquiry into validity of

administrative order or decision." A relevant delineation of the scope of judicial review contemplated is contained in the statute: "The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

In consultations between the Task Force and representatives of the Academic Senate for CSU, the CSU faculty members noted that a high consciousness of the need to fully document on paper all evaluations and all events relevant to a tenure review has developed among CSU peer reviewers and administrators in recent years. The wording of the final phrase of the above subsection of CCP 1094.5 is probably one reason for this.

Administrative Tenure: AB 1725, ECS 87454, 87455, 87456, 87457, 87458, and 87458.3 are reproduced on the following page.

LANGUAGE ON ADMINISTRATIVE TENURE

Amend Educ. Code Section 72411.5 as follows:

72411.5 Every instructional or student services administrator of a community college district shall be employed, and all other administrators of a community college may be employed, by the governing board of the district by a contract not to exceed four years. The contract may be extended for periods of no more than four years at the discretion of the governing board but, in the absence of an express agreement every administrator shall serve in his or her administrative assignment at the pleasure of the governing board. The dismissal of and imposition of penalties for cause on an administrator employed by contract pursuant to this section shall, if the administrator does not have tenure as a faculty member, be in accordance with the terms of the contract of employment. If the administrator does have tenure as a faculty member, the dismissal of and imposition of penalties for cause on the administrator shall be in accordance with the provisions applicable to faculty.

Amend Educ. Code Section 87454 as follows:

87454 A tenured employee, when assigned from a faculty position to an administrative position, or assigned any special or other type of work, or given special classification or designation, shall retain his or her status as a tenured faculty member.

Repeal Educ. Code Sections 87455 and 87456.

Amend Educ. Code Section 87457 as follows:

87457 Whenever a person employed in an administrative position is assigned to a faculty position, the governing board of the community college district shall give such employee, when requested by him or her, a written statement of the reasons for such transfer.

Amend Educ. Code Section 87458 as follows:

87458 A person employed in an instructional or student services administrative position who has not previously acquired tenured status as a faculty member in the same district shall have the right to become a first year probationary faculty member once his or her administrative assignment expires or is terminated if all of the following apply:

(a) The governing board determined at the time the administrator was first employed that he or she possessed the minimum qualifications for employment as a faculty member in the district. The process shall require that, for the governing board to reach a positive determination, the academic senate or an appropriate committee of the academic senate as determined by the senate must provide the board with confirmation that the administrator possesses the minimum qualifications for employment as a faculty member in the district.

(b) The administrator has completed at least two years of satisfactory service, including any time previously served as a faculty member, in the district.

(c) The termination of the administrative assignment is for any reason other than dismissal for cause.

Add Educ. Code Section 87458.3 as follows:

87458.3 Notwithstanding Section 87458, any person who rendered paid service as an instructional or student services administrator in a district before January 1, 1989, and who has not previously earned tenured status in that district as a faculty member, shall have the right to acquire tenured status in the manner provided for certificated administrators under the provisions of law in effect on December 31, 1988. This section does not confer any rights upon any person beyond the rights he or she had under the law as it existed on the effective date of this section.

SEC. 48. The Board of Governors of the California Community Colleges shall do the following:

(a) Review the practices of the California Community Colleges concerning the process of tenuring of community college administrators.

(b) Develop a specific plan for the inclusion of peer review and faculty review into the process of community college administrator tenuring.

(c) Report its preliminary findings and recommendations to the Legislature by March 15, 1988.

Comments: Amended ECS 72411.5 is similar to current law, except that a contract length limitation of four years is provided for all administrators.

ECS 87454 provides that a person who has already attained faculty tenure in a district, retains such tenure if he or she is promoted to an administrative post. (The repealed sections are obsolete.) However, ECS 87458 provides that, if an administrator does not have previous faculty tenure in the district, the administrator may "retreat" to a *probationary* faculty position only if the academic senate has approved his qualifications at the time of initial hire. In addition, the administrator must have two years of satisfactory service in the district.

The last section is a "grandfathering" clause for persons employed as administrators before the effective date of the legislation.

Issue 5: Layoff and Reassignment

Present Law and Practice

The present ECS 87743, which controls layoff and reassignment, was carried over from a K-12 statute enacted in 1959. It defines a seniority principle; a permanent certificated employee may not be laid off while a probationary or less senior permanent employee is retained to render a service which the employee is "certificated and competent to render." (Under related provisions, all the "temporary," or part-time, faculty in a particular discipline must be laid off before probationary or permanent faculty can be dismissed.) Districts must make reassignments as necessary to effectuate the purpose of this section. In practice, both voluntary and involuntary reassignments are made.

Present practice permits some flexibility as to what is meant by being "certificated" to teach a particular subject, in light of the present authorization for the holder of any instructor credential to teach, with local board approval, any subject in which he or she has a "minor." (A minor is not defined in statute, but is defined in Board regulations as meaning 24 units of college work in the discipline, with at least twelve of those units in the upper division.) In addition, it is possible, for fifty-six of the present seventy-six subject areas, to obtain a credential on the basis of work experience with as little education as 12 units of college work. Via these and other routes, many instructors hold multiple subject matter credentials. Between the existence of multiple credentials, and a certain amount of de facto taxonomic freedom in defining which courses are encompassed within the discipline authorization of a given credential, the requirement that a person be "certificated" to gain "bumping rights" into a given discipline is not always a rigorous one.

That part of the present statute which states that one must be "competent" in a given field to acquire bumping rights is very rarely actualized in practice; only a few districts have adopted competency standards for this purpose. Competency standards are liable to subjective interpretation, and therefore could open the possibility of favoritism unless some objective, measurable standard is used; and the only such standard has usually been recency of teaching experience in a particular subject.

The Foothill-DeAnza District and the Foothill-DeAnza Faculty Association recently negotiated a detailed set of competency standards for use in layoff and reassignment, which the Task Force considered asking to have written into statute as a model. The "competency" requirement in the Foothill-DeAnza standards is one year of postsecondary teaching experience in the subject at any time in the past, if you hold a graduate degree in the subject or if the teaching experience was in the Foothill-DeAnza District; or one year of teaching experience in the subject within the past five years, if the teaching was elsewhere than in the district; or one year of relevant industry employment within the last five years, for vocational areas.

AB 1725 Provisions on Layoff and Reassignment AB 1725, ECS 87743, 87743.1, 87743.2, 87743.3, 87743.4, and 87743.5 are reproduced on the following pages.

LANGUAGE ON LAYOFF AND REASSIGNMENT

Amend Education Code Section 87743 as follows:

87743 No tenured employee shall be deprived of his position for causes other than those specified in Sections 87453, 87467 and 87484, and Sections 87732 to 87739, inclusive, and no probationary employee shall be deprived of his position for cause other than as specified in Section 87740 except in accordance with the provisions of Section 87463 and Sections 87743 to 87762, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall have the number of tenured employees in said district, the said governing board may terminate the services of not more than a corresponding percentage of the employees of said district, tenured as well as probationary, at the close of the school year; provided, that the services of no tenured employee may be terminated under the provisions of this section while any probationary employee or any other employee with less seniority, is retained to render a service in a faculty service area in which the records of the district maintained pursuant to Section 87743.4 reflect that the tenured employee possesses the minimum qualifications prescribed by the Board of Governors and is competent to serve under district competency criteria.

Notice of such termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 87740 and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 87413 and 87414. In the event that a tenured or probationary employee is not given the notices and a right to a hearing as provided for in Section 87740, he or she shall be deemed reemployed for the ensuing year.

The board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

Add Educ. Code Sections 87743.1, 87743.2, 87743.3, 87743.4, and 87743.5 as follows:

87743.1 As used in this code, "faculty service area" shall mean a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district.

87743.2 Each community college district shall establish faculty service areas. The establishment of faculty service areas shall be within the scope of meeting and negotiating pursuant to Government Code Section 3543.2. The exclusive representative shall consult with the academic senate in developing its proposals.

87743.3 Each faculty member shall qualify for one or more faculty service areas at the time of initial employment. A faculty member shall be eligible for qualification in any faculty service area in which the faculty member has met both minimum qualifications pursuant to Section 87356 and district competency standards. After initial employment, a faculty member may apply to the district to add faculty service areas for which the faculty member qualifies. Any such application must be received by the district on or before February 15 in order to be considered in any proceeding pursuant to Section 87743 during the academic year in which the application is received. Any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area shall be classified and procedurally addressed as a grievance. If the district has no grievance procedures, fair and equitable procedures for the resolution of such disputes shall be developed by the academic senate and representatives of the governing board.

87743.4 Each district shall maintain a permanent record for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency pursuant to district competency standards. The record shall be contained in the faculty member's personnel file.

87743.5 To determine competency to serve in a faculty service area for the purposes of Section 87743, each community college district shall establish competency criteria for faculty members employed by the district. The development and establishment of such competency criteria shall be within the scope of meeting and negotiating pursuant to Government Code Section 3543.2. Each district and each exclusive representative of faculty shall prepare competency criteria and submit them to the other within 90 days of the effective date of this Section.

Comments: The concept of "Instructional Service Areas" is used on the CSU campuses to define reassignment rights and authorized teaching areas. However, CSU does not have any statewide system of minimum qualifications for teaching tied to a specific taxonomy of disciplines, such as is proposed for community colleges; hence, ISAs (or FSAs, to include the non-instructional faculty) may be more needed at CSU than in community colleges. For community colleges, the relationship is not clear between the locally-defined Faculty Service Area and the Board of Governors-defined taxonomy of "related disciplines" as used in statewide minimum qualifications.

Could the Faculty Service Area on a particular campus be drawn more loosely than the State-level definitions? If FSAs were looser than statewide minimum qualifications, than they would vitiate the effects of statewide minimums. Could FSAs be drawn tighter than statewide definitions? It would appear that the language of the statute would prevent FSAs from being drawn any tighter than statewide minimum qualifications, since "a faculty member shall be eligible for qualification in any faculty service area in which the faculty member has met both minimum qualifications pursuant to Section 87356 and district competency standards." If FSAs could be neither broader nor narrower than statewide minimum qualifications, why would they be needed? The controlling local factor for reassignment purposes would appear to be the locally-adopted competency standards, rather than the FSA.

Locally adopted competency standards would likely be tighter than statewide minimum qualifications, by adding to the minimum qualifications some recency of teaching experience in the subject. And since they are to be negotiated where collective bargaining is in force, it would appear they could largely take the place of the FSA concept. In fact, there is an inherent conflict between the FSA concept as characterized in ECS 87743.3 and the competency standards concept. If the FSA is a permanent certificate, and the competency standard is based on recency of certain experience, then the two might often come into conflict with passage of time. In addition to this problem, the administrative upkeep of FSAs as envisioned in ECS 87743.3 and 87743.4 might recreate some of the paperwork impedances associated with the credentials system.

ECS 87743.5, which requires that competency standards be adopted at each district, sets a precedent in requiring each side of the bargaining table to present proposals on competency criteria to the other within 90 days. Although there are numerous "mandatory subjects of bargaining," that term presently means that a subject must be addressed in good faith by both sides if one side chooses to raise the subject. However, if both sides choose to leave a particular subject alone, there is no precedent for a statute that would force them to negotiate on the matter. In practice, this subsection would mean that, if the local union and senate had agreed in a particular district to leave the drawing up of competency standards to the senate, the law would prohibit that.

Issue 6: Staff Development

Present Law and Practice

Although no comprehensive study has been done so far, it is generally acknowledged that community colleges have fewer resources to offer their faculty than do UC or CSU for in-service training, sabbaticals, participation in intersegmental special programs, and other sorts of professional development activities. Faculty organizations have for several years cited the need for refresher activities to prevent "burn out"; the aging of the community college faculty; rapid changes in community college student demographics; and rapidly advancing technology as factors contributing to the need for more professional development.

In 1981, legislation was enacted authorizing "flexible calendar" operations, via which districts may use up to 15 days of the 175-day instructional year for faculty development activities, such as workshops, conferences, curriculum planning meetings, and other projects. The attendance accounting of participating districts is adjusted so that, for each participating instructor, the hours spent in "flex calendar" activities generate the same apportionment as hours of instruction. Some districts have been reluctant to become involved in "flex calendar" operations for various reasons, including the fact that to do so requires sacrificing instructional hours.

In 1984, a categorical program of development and in-service training for vocational faculty and career counselors was enacted and initially funded at $500,000. Funding for this program has been continued in each subsequent Budget Act, and now stands at $1,050,000 for 1987-88. Districts submit training project proposals to the Chancellor's Office and they are ranked competitively and approved by the Board of Governors.

Bills to create a Professional Development Fund have been sponsored in 1985 (AB 757), 1986 (AB 1796), and 1987 (AB 1653) by faculty organizations, but funding of such efforts has been deleted several times on grounds that the analytical foundation has not been laid. In the 1986-87 Budget Act, CPEC received $400,000 to perform a study of staff development needs in all segments of public education (including K-12). The Commission anticipates adopting the report of the study results at its February 1988 meeting.

AB 1725 Provisions on Staff Development

Intent Language: AB 1725, Section 4, subsections g, h, i, j, k are reproduced on the following pages.

(g) Community college instructors, recruited directly from graduate school or from some form of employment other than teaching, may not be prepared to deal effectively with the wide range of student abilities and attitudes found in community college classrooms. As larger numbers of students from many different cultural backgrounds and with significant English language and other deficiencies are enrolled, the problem will become more serious for both administrators and faculty. The proposed establishment of a student assessment, counseling, and placement program on each campus will also require additional training and assistance for both faculty and administrators.

(h) Professional development for faculty, support staff, student services staff, and administrators is vital. Further, the success of the assessment, counseling, and placement programs will depend upon the effectiveness of this training.

(i) The recruitment of faculty into the community colleges, and the maintaining of morale and enthusiasm among the faculty depends in large part upon the intellectual and personal environment within which faculty work. Much of that environment is created by their own authority over the substantive direction of the programs and courses in which they work, through the quality of their relationship with the college administration, and in the quality of their interactions with the communities of students they teach. At the same time, it is apparent that faculty morale comes from their engagement in the development of new and innovative programs, from their engagement in professional and discipline-based associations, and from an active, intellectual life as scholars and teachers.

(j) Community colleges have substantially less resources available for faculty professional and intellectual development than do other segments of the system of higher education, and this disparity may

become a substantial barrier to the future recruitment of quality faculty. Yet, faculty in the community colleges should be no less intellectually engaged than their colleagues in the other segments. Their primary commitment to teaching makes it imperative that they have a vibrant and rich intellectual life.

(k) The success of the assessment, counseling, and placement system in the California Community Colleges will depend upon the commitment and dedication of trained student services staff. The importance of their role stretches across all aspects of community college life—including: counseling, reading and computational assessment and evaluation, financial aid assistance, providing and directing tutorial services, providing outreach into the local community, providing information to continuing students, and assisting the faculty in designing and providing courses of study which meet the particular needs of very different students. It is essential that the college have adequate service staff, and that they be superbly trained, especially in view of the current diversity of student educational needs in the community colleges.

Comment: The intent language defines the need for faculty development in terms of four factors: changing student characteristics, faculty morale and recruitment, intellectual engagement comparable to other colleges, and success of the matriculation plan.

Fund for Instructional Improvement: AB 1725, ECS 84381 is reproduced on the following page.

LANGUAGE ON FUND FOR INSTRUCTIONAL IMPROVEMENT

84381. There is hereby created in the State Treasury the Community College Fund for Instructional Improvement. The fund shall consist of a revolving loan program and a direct grant program to support alternative educational programs and services within or on behalf of the California Community Colleges, including:

(a) Nontraditional forms, content, and methods of instruction, including, but not limited to, the following:

(1) Instructional programs which involve internships and experiential learning opportunities.

(2) Individualized instructional programs which require student development of learning objectives through learning contracts.

(3) Instructional programs which focus on the development of interpersonal skills.

(4) Instructional programs involving independent study.

(b) Programs for improving teaching abilities of faculty members.

(c) Programs addressing special learning needs of educationally disadvantaged students.

(d) Educational services for new clientele, including older, working adults.

(e) Efforts to improve traditional instructional programs.

(f) Programs for the improvement of the intellectual development of faculty and staff, including, but not limited to, the following:

(1) Intersegmental summer programs including research projects and seminars.

(2) College programs bringing visiting scholars to local districts.

(3) Interdisciplinary programs involving local noncollege institutions in the arts and sciences.

(4) Intersegmental research and public information projects on topics of special concern to rural and urban California regarding the environment, social history, and culture.

(5) Summer "bridge" programs for the transition period into college life.

Comment: The Fund for Instructional Improvement was created in 1977 to provide grants and loans for innovative instructional projects and projects that serve the needs of special student populations in new ways. Project proposals are submitted to the Chancellor's Office and competitively ranked by a statutory review committee. In recent years, grant funding has been about $500,000 per year. The Board of Governors has favored expanding the purposes of the Fund and setting aside a portion of the funding for furtherance of Board-designated state priority efforts.

Subsections (a) through (e) of ECS 84381 represent the present authorized types of programs within the Fund. Subsection (f) is the new language, and stems directly from the Joint Committee report.

AB 1725 would appropriate $6,775,000 to the Fund for purposes of this section.

Professional Development Fund: AB 1725, proposed new Article 5 (commencing with ECS 87150) is reproduced on the following pages.

LANGUAGE ON PROFESSIONAL DEVELOPMENT FUND

Professional Development Fund

Add Article 5 (commencing with Section 87150) to Chapter 1 of Part 51 of the Educ. Code as follows:

Article 5. Community College Professional Development Fund

87150 There is hereby created in the State Treasury the Community College Professional Development Fund, to be administered by the Chancellor of the California Community Colleges, for purposes of locally developed and implemented staff development programs for community college certificated and classified staff.

87151 The Chancellor of the California Community Colleges shall annually allocate funds appropriated for the purposes of this article to each participating community college district based upon the following computation:

(a) Determine the total average daily attendance in the California Community Colleges during the previous academic year.

(b) Divide the amount of funds appropriated for purposes of this article by the number obtained pursuant to subdivision (a).

(c) Multiply the quotient obtained pursuant to subdivision (b) by the average daily attendance at the community college during the previous academic year.

(d) The product obtained pursuant to subdivision (c) shall be allocated to the district maintaining the community college, which shall forward the allocation to the committee established by Section 87153.

87152 The Board of Governors of the California Community Colleges shall adopt any regulations necessary for the implementation of this article. The board may require any community college district to submit data related to faculty development as a condition of participation by any of the community colleges maintained by the district in the program.

87153 Staff development programs funded under this article shall be administered in each participating community college district by the appropriate staff committee in accordance with the following requirements:

(a) The committee shall comprise equal numbers of members selected by the local academic senate or faculty council and, wherever applicable, by the employee organization selected as the exclusive representative of the negotiating unit which includes full-time faculty pursuant to Article 5 (commencing with Section 3540) of Chapter 10.7 of Title 1 of the Government Code. The committee shall also include one administrator selected by the chief administrative officer of the district and one classified employee pursuant to Article 5 (commencing with Section 3540) of Chapter 10.7 of Title 1 of the Government Code.

87154 The staff committee formed under Section 87153 shall do all of the following:

(a) Develop program priorities that reflect the needs of the district and its individual colleges.

(b) Establish procedures for the nomination and selection of staff members and group members to receive staff development grants. The

procedures shall ensure that grants are made available to both full-time and part-time staff.

(c) Submit grant proposals selected by the committee to the governing board of the community college district for approval.

(d) Review the grants funded under this article and submit annual reports on their use and effectiveness to the community college district governing board and the Board of Governors of the California Community Colleges.

87155 The authorized uses of funds allocated under this article shall include all of the following:

(a) Improvement of teaching.

(b) Maintenance of current academic and technical knowledge and skills.

(c) In-service training for vocational education and employment preparation programs.

(d) Retraining to meet changing institutional needs.

(e) Intersegmental exchange programs.

(f) Development of innovations in instructional and administrative techniques and program effectiveness.

(g) Computer and technological proficiency programs.

(h) Courses and training implementing upward mobility programs.

(i) Other activities determined to be related to educational and professional development pursuant to criteria established by the Board of Governors of the California Community Colleges, including, but not necessarily limited to, programs designed to develop self-esteem.

87156 This article shall be operative only if funds are provided therefor in the annual Budget Act.

Comments: This proposed new article is identical to AB 1653 (Farr), sponsored by the Faculty Association of California Community Colleges. Although it was submitted with the Task Force's requested amendments in August, it was never specifically endorsed by the Task Force.

The language would require that money made available for staff development be distributed on a straight pro-rata ADA basis. This could mean that small colleges would get little assistance. At each campus, the funds would be distributed (with local board approval) by a committee composed of faculty members appointed by the senate and the union, one administrator, and one classified staff member. Part-time as well as full-time staff would be eligible for grants.

The Board took a neutral position on AB 1653 and its predecessor bill of 1986, largely because of objections to the automatic nature of the statewide allocation formula, which precludes a leadership role for the Board, and partly out of concern that introduction of such a prescriptive mechanism and list of fundable activities is premature while the CPEC study of staff development needs is still under way.

Board Plan: AB 1725, Section 46 is reproduced on the following page.

LANGUAGE ON BOARD PLAN FOR PROFESSIONAL DEVELOPMENT

SEC. 46. (a) The Board of Governors of the California Community Colleges shall develop and implement a plan to strengthen professional development programs on community college campuses. The programs shall be designed to serve faculty, administrators, and staff alike.

(b) Both certified and classified student services staff shall be included in the plan to strengthen professional development programs, especially those programs aimed at assessment methodologies, cultural and linguistic issues, program diversity, and personal and motivational factors which are central to student services.

(c) The plan shall include, but shall not be limited to, all of the following.

(1) A thorough critique of the methodologies and procedures of current and proposed assessment instruments.

(2) An analysis of the significant variables and errors within all assessment, cultural, and linguistic variables in and between the many communities served by the colleges.

(3) A statement regarding motivational and other personal factors central to collegiate success.

(4) An exploration of new ideas in pedagogical theory and practice, both within and across academic disciplines.

(5) A description of the method in which these programs in professional development shall seek to engage faculty and administrators in the issues raised by the major transition through which the colleges are moving.

(d) The plan shall take into account the findings and recommendations of the California Postsecondary Education Commission study concerning staff development, and shall include a statement regarding whether and in what manner an appropriation to the board of governors for allocation among the participating colleges is necessary and appropriate for this purpose.

Comments: The language of this section is drawn from the Joint Committee report and reflects particular concern that staff development be linked to student services and matriculation. This contrasts with the emphasis placed by the Task Force on linking staff development to individual faculty evaluations and tenure decisions.

AB 1725 would appropriate $5,590,000 for purposes of this section.

Issue 7: Collective Bargaining

Present Law and Practice

Collective bargaining in schools and community colleges is governed by the Educational Employment Relations Act (Chapter 10.7 of Division 4 of Title 1 of the Government Code), passed in 1975. This act created the Public Employment Relations Board and empowered it to oversee fair bargaining and labor practices, and to determine bargaining unit classifications, among other things. Sixty-two community college districts now have exclusive bargaining representatives for their full-time faculty. The California Teachers Association (an affiliate of the National Education Association) represents full-time faculty in 38 districts; the California Federation of Teachers (an affiliate of the American Federation of Teachers) represents full-time faculty in 15 districts; and in 9 districts the faculty are represented by independent associations.

The Act provides that management and confidential employees may not be represented by a union, and supervisory employees may not be in the same bargaining unit as those they supervise. Also, certificated and classified employees may not be in the same bargaining unit. A management employee is one who has significant responsibility for formulating district policies or administering programs; a supervisory employee is one who has authority to hire, discharge, promote, etc., other employees, or to effectively recommend such action.

The Higher Education Employer-Employee Relations Act (HEERA), governing bargaining at UC and CSU, was passed in 1978 and contains certain differences from EERA, but is also administered by the Public Employment Relations Board.

A study of collective bargaining in California colleges and universities published by CPEC in 1983 remarked that its effects had been "generally positive although relatively modest in magnitude."

Intent Language: AB 1725, Section 1 (m), and Section 4 (f) are reproduced on the following page.

(m) The current tenure system lacks adequate participation by the faculty, provides an inadequate probationary period for the evaluation of permanent faculty, and does not provide uniform systemwide procedures for due process and grievance.

It is a purpose of this chapter to improve academic quality and to that end the legislature specifically intends to authorize more responsibility for faculty in duties incidental to their primary professional duties. In exercising such increased responsibilities faculty are not deprived of their status as employees under Government Code Section 3540 et seq. The exercise of such increased responsibility shall not make such faculty managerial or supervisory employees as said terms are defined in the Educational Employment Relations Act, Government Code Section 3540, et seq.

There has been a great deal of uncertainty as a result of the Yeshiva decision of the United States Supreme Court regarding whether greater faculty involvement in institutional governance and decision-making might subject a faculty to legal challenge in connection with their rights of collective bargaining. This legislation is designed so that faculty who perform the duties described in Section 87610.1 (e) do not have to choose between collective bargaining and greater participation in such functions by ensuring that such increased participation which occurs as an outgrowth of this legislation shall not subject said faculty to losing their status as employees under the Educational Employment Relations Act. In order to give effect to these purposes, Section 87610.1 (e) is hereby enacted.

(f) Changes in the governance of the California Community Colleges will affect, and be affected by, current collective bargaining agreements and the statutes governing those agreements, and that with regard to jurisdictional matters and questions of process, there can be considerable confusion regarding the relationship between collective bargaining agents, academic units organized through the colleges including departments and schools, and the academic senates.

Comment: See comments on the "Yeshiva protection" language.

Definitions: AB 1725, ECS 87001, 87002, and 87003 are reproduced on the following page.

LANGUAGE ON DEFINITIONS

87001 through 87007 and add the following new definitions:

87001 "Administrator" means any person employed by the governing board of a community college district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of the Government Code.

87002 "Instructional or student services administrator" means an administrator who is employed in a position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Instructional and student services administrators include, but are not limited to, chancellors, presidents, and instructional or student services managers.

87003 "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of the Government Code and for which minimum qualifications for hire have been specified in the regulations of the board of governors adopted pursuant to Section 87356 (a). Faculty include, but are not limited to, instructors, librarians, counselors, community college health services professionals, handicapped student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1988, required certification qualifications.

Comments: The distinction between "administrator" and "faculty," as the words are to be used in the new law, is drawn from EERA in terms of collective bargaining status. The last clause of ECS 87003, which defines as "faculty" anyone who performs a service that previously required certification qualifications (i.e., a credential), is intended to ensure continuity of existing bargaining unit distinctions. It is needed because the Government Code establishes the presence or absence of certification as a distinction to be used in assigning employees to bargaining units.

ECS 87002 attempts to define, but not exclusively, which administrators will be required to meet statewide minimum qualifications under the new system. This is necessary because presently a distinction is drawn between "certificated administrators" (about 72 percent of all administrators) and "classified administrators" (about 28 percent of all administrators). An issue which is not addressed here is the existence of certain jobs, particularly personnel officer and business manager, which are presently "certificated" in some districts and "classified" in others. It would be within the local district's discretion to determine when a particular job fits the definition of "instructional or student services administrator" and would thus require the incumbent to meet statewide minimum qualifications.

Yeshiva Protection: AB 1725, ECS 87610.1 (e) is reproduced on the following page.

LANGUAGE ON YESHIVA PROTECTION

(e) Any employees who are primarily engaged in faculty or other traditional bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Government Code Section 3540.1, because of such duties. Such duties include, but are not limited to serving on hiring, selection, promotion, evaluation, budget development and affirmative action committees, and other policy development committees, and making effective recommendations in connection with said activities. Such employees whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees.

Comments: In 1980 the U.S. Supreme Court, reversing a decision of the National Labor Relations Board, characterized the faculty at Yeshiva University, a private nonprofit institution, as managerial, and declared that an organization composed of such faculty was not a labor union under the National Labor Relations Act. Since then, faculty who win additional influence in the governance of their colleges must be concerned about becoming "Yeshivized": losing the protections of collective bargaining. However, aside from the specifics of governance practice at Yeshiva, there are two salient differences between Yeshiva University and any California community college: Yeshiva is a private institution; and labor practices at Yeshiva are not under the jurisdiction of a state collective bargaining act, as in California.

A detailed analysis of the implications of the Yeshiva case and related cases that have come before the Public Employment Relations Board in California, by an attorney retained by the Task Force (Robert Bezemek), concluded that at present there is little that community college faculty need fear from Yeshiva, because of the differing circumstances and the protections inherent in EERA. However, the attorney recommended, in case future PERB decisions should tend in the direction of Yeshiva, that this additional protective language be added.

Rodda Act Study: AB 1725, Section 49 is reproduced on the following page.

LANGUAGE ON RODDA ACT STUDY

SEC. 49. The Board of Governors of the California Community Colleges shall review the Education Employment Relations Act, Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, with regard to the delineation of roles and responsibilities of the academic senate and the faculty bargaining agents, especially in light of proposed changes in the role of faculty concerning hiring, peer review and evaluation, and curricular design. The results of this review including the recommendations of the board of governors shall be submitted to the Legislature no later than January 1, 1993.

Comment: The salient difference between EERA (the Rodda Act), which governs community colleges, and HEERA, which governs UC and CSU, for purposes of AB 1725, is the scope of collective bargaining representation with regard to personnel actions. The scope of bargaining for a union representing school or community college employees includes (among many other things), "transfer and reassignment policies . . . procedures to be used for the evaluation of employees . . . procedures for processing grievances . . . and the layoff of probationary certificated school district employees" (GCS 3543.2). The scope of bargaining for a union representing faculty in UC or CSU "is limited to wages, hours of employment, and other terms and conditions of employment." Specifically, the scope of bargaining at CSU does not include "criteria and standards to be used for the appointment, promotion, evaluation and tenure of academic employees, which shall be the joint responsibility of the academic senate and the trustees." There is no specific mention of who is responsible for grievances. At UC, "procedures for processing grievances" of faculty members are also specifically excluded. Any of the matters reserved to the senate and governing board may become part of bargaining under certain circumstances: at CSU, by choice of the trustees only; at UC, by choice either of the regents or the academic senate (GCS 3562).

The staff of the Master Plan Commission, in examining these statutes, noted that the Rodda Act generally protects the functions of academic senates in community colleges only "so long as the exercise of such functions do[es] not conflict with lawful collective agreements," and concluded that, "It is doubtful that academic senates will play an important role in Community College governance as long as their role is restricted in this manner."

The Joint Committee report and the original language of AB 1725 would have required submission of the review and recommendations on EERA by July 1, 1988. A delay was successfully sought by faculty unions.

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